

## Rule 5, Ariz. R. Crim. P.

### PRELIMINARY HEARINGS – Review by Superior Court is limited.....

.....Revised 12/2009

Rule 5.5, Ariz. R. Crim. P., provides for limited Superior Court review of the magistrate's determination to bind over a defendant in a preliminary hearing.

Rule 5.5(a) states:

**a. Grounds.** A magistrate's determination to bind over a defendant shall be reviewable in the Superior Court only by a motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right, or that no credible evidence of guilt was adduced. This motion shall allege specifically the ways in which such evidence was lacking.

The Comment to this Rule explains that this Rule removes the former distinction between motions to quash based on *legal* insufficiency and petitions for writ of habeas corpus based on *factual* insufficiency. Instead, "A single remedy – a motion to repeat the probable cause proceeding – is provided by this rule."

Rule 5.5(b) sets a 25-day time limit after the preliminary hearing for the defense to file any motion under Rule 5.5(a) challenging the magistrate's decision to bind over a defendant. Rule 5.5(c) limits the Superior Court's review of the evidence to the record of the proceedings.<sup>1</sup> Rule 5.5(d) provides that if a motion under Rule 5.5(a) is granted, "the case shall be returned to the magistrate

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<sup>1</sup>Rule 5.2 provides that the magistrate "shall provide for a verbatim record of proceedings, which may be by a certified court reporter, electronic, or other means in the discretion of the Presiding Judge of the Superior Court unless a certified court reporter is requested by a party." Under Rule 5.6, the preliminary hearing proceedings

with appropriate instructions.” The State then has only fifteen days to begin a new preliminary hearing; if the State does not meet that deadline, the case is dismissed.

The Superior Court’s review is limited to a review of the evidence that was presented at the preliminary hearing. As the Comment to Rule 5.5 (c) states, “Any new evidence will be appropriate for trial, or a motion to dismiss under Rule 16.5(b), but the probable cause determination should not be upset by later-discovered facts.”

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are not transcribed unless a party makes a written request “avowing that there is a material need for a transcript.”